

# A NEW CHAPTER

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# Law Commission

- 2006 – Scoping Paper with responses published later that year
- Very ambitious and extremely exciting

# IN

- The definition of insurable interest
- Post-contractual good faith especially as regards fraud.
- Remedies – especially where an insurer unreasonably delays
- Law of agency given its impact on non-disclosure

# OUT

- Worthless policies i.e. over insurance in IP
- Contract certainty
- Code for consumers

# Non-Disclosure

## Proposed New Statute Inclusions

- Re-define ‘material term’
- Avoidance only where there is fraud & clarify – what fraud is.
- Clarify remedies for negligent misrepresentation.
- Abolish requirement for consumers to volunteer information
- Abolish basis of contract clauses
- New law should be mandatory in consumer insurance with no contracting out

# Test for Materiality

1. The insurer must show inducement – as in it would not made contract had it known true facts.
2. Insurer must show either: -
  - a) the proposer appreciated fact at issue would have significance, or
  - b) a reasonable insured would have appreciated its significance in those circumstances.

# Remedies for Non-Disclosure

- The remedy available should differ according to the state of mind of insured.
- This causes quite a big problem for insurers or indeed adjudicators in proving the state of mind of the insured.
- However otherwise they basically follow what the FOS has been doing all along.

# Remedies for Insurers

- Fraud = avoidance
- Innocent = none
- Negligent = proportionate

# Intermediaries

- For whom does the intermediary act?
- Always deemed acting for insurer if the answer to these questions is 'yes'.
  1. Does he have authority to bind the insurer?
  2. Is he the appointed rep of the insurer?
  3. Does he have actual express authority to collect and pass on pre-contract information?

# Intermediaries acting for Consumer

- If he conducts a fair analysis of the market
- The consumer pays him a fee
- He provides full disclosure of the commission he will receive.

# Issues

- What if the market is too small which means most of business is placed with one provider?
- Accepting a fee from the consumer does not preclude accepting other fees from an insurer.
- Disclosure of commission is independent of any relationship with the insurer so how does this then indicate the relationship?
- Main point is - what did the consumer think at the point of sale?

# Tele-Interviewing

- Law Commission see this as a possible solution to the problem of intermediary fraud.
- Removes issue of failing to give information given by consumer.
- Intermediary not presenting the questions accurately; misreporting of answers given; failure to collect key information.
- Consumer genuinely forgetting information; deliberately failing to mention information; or misunderstanding the question.

# Insurable Interest

- For Life – category of insurable interest based on natural affection – so as to include co-habitees, dependent children and parents. Possibly also fiancé(e)s, siblings, grandparents or grandchildren.
- Base on a ‘reasonable expectation of pecuniary loss’.
- Consent of Life to be insured to provide an alternative ground for insurable interest to allow flexibility and also to safeguard against the creation of moral hazards.
- Remedy – should be void rather illegal

# Dispute Resolution

- Wants to punish dishonesty but protect consumers from disproportionate penalties for minor mistakes.
- Key will be ‘impact’ of non-disclosure and the ‘intention’ of the parties.
- Current practice is a mixture of both elements but Law Commission is uncomfortable where some dishonesty with minor impact is rewarded by full payment